

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 20-1083V

UNPUBLISHED

DIANE BUSHEMI,

Petitioner,

v.

SECRETARY OF HEALTH AND  
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: March 14, 2022

Special Processing Unit (SPU);  
Damages Decision Based on Proffer;  
Influenza (Flu) Vaccine; Shoulder  
Injury Related to Vaccine  
Administration (SIRVA)

*Edward M. Kraus, Law Offices of Chicago Kent, Chicago, IL, for Petitioner.*

*Claudia Barnes Gangi, U.S. Department of Justice, Washington, DC, for Respondent.*

### **DECISION AWARDING DAMAGES<sup>1</sup>**

On August 27, 2020, Diane Bushemi filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*<sup>2</sup> (the “Vaccine Act”). Petitioner alleges that she suffered a shoulder injury related to vaccine administration (SIRVA) resulting from an influenza (flu) vaccination received on October 8, 2019. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On December 9, 2021, a ruling on entitlement was issued, finding Petitioner entitled to compensation for SIRVA. On March 14, 2022, Respondent filed a proffer on award of compensation (“Proffer”) indicating Petitioner should be awarded \$96,028.09, including \$95,000.00 for actual and projected pain and suffering and \$1,028.09 for past unreimbursable expenses. Proffer at 1. In the Proffer, Respondent represented that

<sup>1</sup> Because this unpublished Decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). **This means the Decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

<sup>2</sup> National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all section references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

Petitioner agrees with the proffered award. *Id.* Based on the record as a whole, I find that Petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **I award Petitioner a lump sum payment of \$96,028.09, including \$95,000.00 for actual and projected pain and suffering and \$1,028.09 for past unreimbursable expenses in the form of a check payable to Petitioner.** This amount represents compensation for all damages that would be available under Section 15(a).

The Clerk of Court is directed to enter judgment in accordance with this decision.<sup>3</sup>

**IT IS SO ORDERED.**

s/Brian H. Corcoran

Brian H. Corcoran  
Chief Special Master

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<sup>3</sup> Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS**  
**OFFICE OF SPECIAL MASTERS**

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DIANE BUSHEMI,	)	
	)	
Petitioner,	)	
v.	)	No. 20-1083V
SECRETARY OF HEALTH AND HUMAN	)	Chief Special Master Corcoran
SERVICES,	)	SPU
	)	ECF
Respondent.	)	
	)	

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**PROFFER ON AWARD OF COMPENSATION**

On August 27, 2020, Diane Bushemi (“petitioner”) filed a petition for compensation under the National Childhood Vaccine Injury Act. *See* 42 U.S.C. §§ 300aa-10 to -34 (“Vaccine Act” or “Act”). Petitioner alleges that she suffered from a left shoulder injury related to vaccine administration (“SIRVA”) following her receipt of an influenza vaccine on October 8, 2019. Petition (ECF No. 1) at 1, 5. On November 19, 2021, respondent filed a Rule 4(c) Report recommending compensation be awarded. ECF No. 22. On December 9, 2021, the Chief Special Master issued Ruling on Entitlement finding that petitioner is entitled to compensation. ECF No. 24.

**I. Items of Compensation**

**A. Pain and Suffering**

Respondent proffers that the Court should award petitioner a lump sum of \$95,000.00 for her actual and projected pain and suffering. This amount reflects that the award for projected pain and suffering has been reduced to net present value. *See* 42 U.S.C. § 300aa-15(a)(4). Petitioner agrees.

**B. Past Unreimbursable Expenses**

Respondent proffers that the Court should award petitioner a lump sum of \$1,028.09 for past unreimbursable expenses, as provided under 42 U.S.C. § 300aa-15(a)(1)(A). Petitioner agrees.

**II. Form of the Award.**

Petitioner is a competent adult. Evidence of guardianship is not required in this case. Respondent recommends that the compensation provided to petitioner should be made through a lump sum payment of \$96,028.09, in the form of a check payable to petitioner, which represents all elements of compensation to which petitioner would be entitled under 42 U.S.C. § 300aa-15(a).<sup>1</sup> Petitioner agrees.

Respectfully submitted,

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Principal Deputy Assistant Attorney General

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Torts Branch, Civil Division

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Deputy Director  
Torts Branch, Civil Division

ALEXIS B. BABCOCK  
Assistant Director  
Torts Branch, Civil Division

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<sup>1</sup> Should petitioner die prior to the entry of judgment, the parties reserve the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future medical expenses, future lost earnings, and future pain and suffering.

/s/ *Claudia B. Gangi*  
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